

## **REMARKS**

In an Advisory Action dated October 26, 2006, the Examiner maintains the rejection set forth in the final Office Action dated August 18, 2006. Claims 1-4 and 6-26 and pending and stand rejected.

### ***Amendments to the Specification***

The Examiner continues to object to the use of the trademark BOOKWALTER in the specification as failing to be accompanied by its generic terminology. While Applicants continue to disagree, the specification is amended to delete the term “BOOKWALTER,” thereby obviating the basis for this objection.

### ***Claim Rejections Pursuant to 35 U.S.C. §102***

#### **U.S. Patent No. 3,626,471 of Florin**

Claims 18-20 stand rejected pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,626,471 of Florin. In the Advisory Action dated October 26, 2006, the Examiner argues that “it is noted that the prior art need only be “adapted to” connect two retractor devices and these devices could be connected (e.g. by stacking, tying, clamping, etc.).” Applicants do not disagree that the prior art need only be capable of performing the claimed function, however the claimed invention cannot be anticipated unless the prior art teaches each and every element of the claim – the Examiner has overlooked an element of the claim. Claim 18 specifically recites a *cross member*. Florin does not teach any type of cross member, much less one that is capable of performing the claimed function of removably connecting two tissue retractor and guide devices. Florin merely teaches a single brain retractor device, and the device does not include any type of cross member that is capable of connecting the device to another device. Accordingly, Florin cannot anticipate the claimed invention, and therefore claim 18, as well as claims 19-20 which depend therefrom, distinguish over Florin and represent allowable subject matter.

#### **U.S. Patent No. 5,676,666 of Oxland et al.**

Claims 18-24 stand rejected pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,676,666 of Oxland et al. (“Oxland”). In the Advisory Action mailed October 26, 2006, the Examiner argues that:

applicant's arguments appear to depend on an interpretation different from that given in the rejection. For example, portion 72 and 74 in the rejection refers to "planar retracting surfaces," which are at the distal-most end of the elongate member. Portions 76 and 68 extend beyond a distal end of the guide members 80 and 82.

Applicants understand the Examiner's interpretation of Oxland, however the Examiner is again overlooking the specific language of the claims. Claim 18 requires that the elongate member – not the guide member – have a distal, tissue-retracting portion that extends a distance beyond a distal-most end of the guide member. Independent claim 21 similarly requires that the *elongate member* have a distal-most end that extends a distance beyond a distal-most end of a guide member to form an extension portion that is adapted to rest against an outer edge of a spinal fixation plate to align the guide member with the spinal fixation plate. The elongate member (68, 70) of Oxland does not have a tissue-retracting portion that extends a distance beyond the guide member (72, 74). Portions 72, 74, 76, and 78 are all part of the guide member, *not the elongate member*, and thus cannot form the claimed tissue-retracting portion. Accordingly, Oxland cannot anticipate claims 18 and 21, and thus claims 18 and 21, as well as claims 19-20 and 23-24 which depend therefrom, distinguish over Oxland.

***Claim Rejections Pursuant to 35 U.S.C. §103***

***(a) Claims 1-4 and 6-17***

The Examiner continues to reject claims 1-4 and 6-17 pursuant to 35 U.S.C. §103(a) as being obvious over Oxland in view of U.S. Patent No. 4,686,972 of Kurland. In the Advisory Action dated October 26, 2006, the Examiner argues that "the motivation to combine the concave ends of Kurland with the device of Oxland et al. is to facilitate proper seating on a drilling target to improve a procedure. This teaching in Kurland is applicable to the use set forth in Oxland et al., since both devices are used on target surfaces."

Once again, the Examiner is overlooking the language of the claim which requires that the elongate member – not the guide member – have substantially concave distal-most surface. The elongate member (68, 70) of Oxland is surrounded by and recessed relative to the distal end of the guide member. Thus, configuring the distal end of the elongate member to have a concave distal surface, as suggested by the Examiner, would not facilitate positioning of the device on a drilling target. Accordingly, no person having ordinary skill in the art would be motivated to make such a

modification.

The Examiner also continues to overlook the fact that Oxland is already designed to facilitate proper seating on a drilling target, namely a bone plate. The guide member specifically includes opposing lips (76, 78), positioning rings (84, 86), and a forceps locking mechanism for mating to a bone plate. Such a specific mating configuration is likely to provide better positioning of the device on a drilling surface than modifying the device to have a concave distal end. In fact, modifying Oxland's device to have a concave distal end would interfere with mating of the device to a bone plate, thereby rendering the device inoperative for its intended purpose.

Therefore, claim 1, as well as claims 2-4 and 6-17 which depend therefrom, distinguish over Oxland and Kurland, taken alone or combined, and represent allowable subject matter.

*(b) Claims 25 and 26*

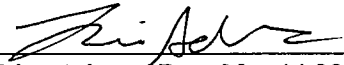
The Examiner rejects claims 25 and 26 pursuant to 35 U.S.C. §103(a) as being obvious over Oxland. Claims 25 and 26 depend from claim 21. Thus, for the same reasons previously discussed with respect to claim 21, claims 25 and 26 distinguish over Oxland and represent allowable subject matter.

***Conclusion***

Applicants submit that all pending claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

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Respectfully submitted,

  
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